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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT: Definition of "Continuous Compliance"  
and Enforcement of O&M Violations

FROM: Kathleen M. Bennett *Kathleen M. Bennett*  
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TO: Directors, Air and Waste Management Divisions  
Regions I-IV, VI-VIII and X

Directors, Air Management Divisions  
Regions V and IX

The purpose of this memo is to provide you with some general programmatic guidance as to the meaning of the term "continuous compliance" and the role of operation and maintenance (O&M) requirements in assuring that continuous compliance is maintained. Of course, source specific guidance on O&M measures which can assure continuous compliance is an essential part of this program and this memorandum is not intended to substitute for such guidance. As you know, DSSE has undertaken a number of initiatives related to the continuous compliance effort and we hope to discuss the progress of those efforts with you at the upcoming workshop at Southern Pines. DSSE will be forwarding to you an updated summary of these activities prior to the workshop. However, given the continuing attention being given to "continuous compliance," I think it would be helpful to have a common understanding of what that concept entails.

In the strict legal sense, sources are required to meet, without interruption, all applicable emission limitations and other control requirements, unless such limitations specifically provide otherwise. However, of primary concern to the Agency are those violations that could have been prevented, through the installation of proper control equipment and the operation and maintenance of that equipment in accordance with proper procedures. We believe the concept of continuous compliance is essentially the avoidance of preventable excess emissions over time as a result of the proper design, operation and maintenance of an air pollution source. This includes avoidance of preventable instances of excess emissions, minimization of

emissions during such instances, and the expeditious termination of any instances which do occur.

In determining the appropriate enforcement response to a violation, one factor the Regions should consider is whether the source had in place an active program designed to maintain continuous compliance. Such a program would normally involve one or more of the following elements: continuous or periodic self-monitoring of emissions; monitoring of operating parameters such as scrubber pressure drop, incinerator combustion temperature or flow rates; maintenance of a spare parts inventory; maintenance of spare control device modules; and procedures designed to correct the types of violations that are most likely to occur. Evaluating a violator's O&M program is a necessary step in determining the type and degree of relief that an enforcement action could be expected to achieve.

Documentation of avoidable departures from proper procedures as just discussed may be used not only as supporting evidence in cases involving emission limit violations, but as primary evidence in cases involving violations of O&M requirements specified in permits and regulations. As the Agency continues to place more emphasis on O&M requirements in the context of national standards, and to encourage States to develop O&M requirements, the enforcement program must be adapted to address violations of these requirements. A violation of specified O&M requirements, even in the absence of documented emission limit violations, can be an appropriate trigger for EPA enforcement response.

In conclusion, evaluation of a source's continuing compliance program would be useful both in determining the appropriate Agency response to an emission limit violation, and in assessing the source's compliance with specified O&M requirements.

If my staff can be of assistance in evaluating specific cases, please feel free to call John Pasnic at 382-2826.